

COMPLIANCE BOARD OPINION NO. 95-8
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November 2, 1995

Mr. Michael Powell

The Open Meetings Compliance Board has considered your complaint dated September 1, 1995, regarding the closed meeting held by the Mayor and Board of Aldermen of Frederick on August 31, 1995. For the reasons set forth in Part II below, the Compliance Board finds no violation of the Act.

I

Complaint and Response

Your letter recounts a controversy over an event, called the Sabers and Roses Ball, that was planned as a part of the City of Frederick's 250th Anniversary Celebration. Apparently, the name of the ball evoked an event during the Civil War, when Confederate General J.E.B. Stuart and his cavalry troops held a dance. This perceived association with the Confederacy led to a public uproar, including picketing of the Frederick City Hall.

According to your complaint, on the morning of Thursday, August 31, a quorum of the Board of Aldermen joined with the Mayor and some staff members "in a closed meeting to discuss a response to two local groups that had organized the picketing at City Hall." You complain that the Act was violated because the meeting was closed. Moreover, you complain that the meeting ignored the Act's procedural requirements — notice of the meeting, a vote to close the meeting, a statement of reasons for closing the meeting, and the taking of minutes.

Finally, you complain that, at the August 31 closed meeting, those present discussed a plan to hold a second closed meeting on the next day. According to your complaint, the discussion focused on who would be invited to, and who would be excluded from, the planned meeting. Although the September 1 meeting was ultimately canceled, you "still believe a violation of the Open Meetings Law took place when elected officials, at the Thursday closed meeting, intentionally planned and scheduled an additional closed meeting;

that no vote was taken on August 31 to close the up-coming second meeting; [and] that no reason or exemption was given for closing that meeting.”

In a timely response on behalf of the City, N. Lynn Board, Esquire, the City Attorney, acknowledges that a closed meeting occurred on August 31 but denies that the Act applied to it. Ms. Board points out that the former Mayor had “created an ad hoc committee named the 250th Anniversary Committee to coordinate the festivities and celebration in 1995 of the 250th anniversary of the City’s founding.... The 250th Anniversary Committee has planned and held numerous events throughout 1995, with several more events to occur before January 1, 1996.... One of the events planned by the 250th Anniversary Committee was the Sabers and Roses Ball”

When the controversy erupted, the present Mayor, James S. Grimes, “determined that a press release should be issued to address the situation.” A press release was prepared and discussed at an open meeting on August 30 of a subcommittee of the 250th Anniversary Committee called the Steering Committee.

Then, on August 31, Mayor Grimes met with the City Attorney and the coordinator of the anniversary events to discuss the press release. Several Aldermen asked to attend the meeting, and a majority of the members of the Board of Aldermen did attend the meeting. Ms. Board indicates that the issue of Open Meetings Act Compliance did arise: “At the beginning of the meeting a question was raised about whether the meeting was in compliance with the Open Meetings Act, and I advised the Mayor and Board of Aldermen that since the issuing of a press release concerning an event planned by an ad hoc committee was an executive function, the meeting was not required by the Open Meetings Law to be a public meeting. Even though not required by the Open Meetings Law, a vote was taken to close the meeting as the purpose of the meeting was to exercise an executive function.”

Ms. Board describes the events at the meeting as follows:

During the meeting itself, the Mayor asked for comments regarding the wording of the press release. The position of the City nor the intent or substance of the press release were not modified in any way.... During the meeting, one Alderman suggested that the Mayor contact members of the African-American community to seek their input with regard to the issue. The Mayor decided that he would hold a meeting as soon [as] possible with such a group and asked for suggestions as to who should be included. Contrary to the statements contained in the letter from Mr. Powell, it was not discussed during this

meeting whether representatives from the groups picketing or the press would be invited to the meeting. It was only after the meeting in discussions between the Mayor and myself that these decisions were discussed and made. Other than the vote to go into executive session, no vote was taken during the meeting.

Ms. Board suggests that this entire discussion falls within the “executive function” exclusion from the Act. Moreover, with specific regard to the proposed meeting the next day, Ms. Board points out “that the proposed meeting of September 1, 1995, was never held. It certainly cannot be a violation of the Open Meetings Act to consider having a meeting that is closed to the public; a violation only occurs if a meeting is held that is not in compliance with the Act.”

II

Discussion

In the opinion of the Compliance Board, the closed meeting on August 31 was outside the scope of the Open Meetings Act. This is so because the topic involved an “executive function” excluded by the Act by §10-503(a)(1)(i) of the State Government Article, Maryland Code.

The Compliance Board applies the “executive function” exclusion by first considering whether the discussion in question falls within any other function as defined in the Act. If so, then the “executive function” does not encompass that discussion. §10-502(d)(2). In this instance, the discussion of the proposed press release and a subsequent meeting with some representatives of the community does not fall within any of the other functions defined in the Act. *See* §10-502(b), (e), (f), (i), and (j) (definitions of advisory, judicial, legislative, quasi-judicial, and quasi-legislative functions).

Turning to the next step in the analysis of executive function, the Compliance Board concludes that this meeting involved “the administration of ... a law of a political subdivision of the State.” §10-502(d)(1). The anniversary celebration itself is part of the administrative side of municipal government, run by the Mayor.¹ In that role, and pursuant to authority granted in the City charter, the former Mayor appointed a committee to administer the

¹ Under §28 of the Frederick City Charter, the Mayor is “the chief executive officer and the head of the administrative branch of the city government. The mayor shall be responsible for the administration of the city’s affairs to the board of aldermen and to the voters of the city.”

celebration. The public controversy over the Sabers and Roses Ball resulted from a decision by those with this administrative responsibility. Likewise, the Mayor's decision to issue a press release, in an effort to calm the situation, was an aspect of his role as head of the City's administrative apparatus.

When the Board of Aldermen, the public body in question, wanted to participate in the discussion of the press release, they were acting for understandable political reasons. They must also have been feeling the public pressure about the ball. But the responsibility for dealing with the situation was the Mayor's, in his role as executive, and the participation of the Aldermen did not transform the nature of the event. It was an executive function.

Finally, the Compliance Board agrees with the City Attorney's position that the Act cannot be violated by a meeting that does not occur. The Compliance Board expresses no opinion whether the proposed meeting on September 1 might lawfully have been closed; however, even if it were required to have been open, the mere planning for an unlawfully closed meeting is not itself a violation of the Act.²

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
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² The Board of Aldermen was under no obligation at the August 31 meeting to vote about the closed status of the planned September 1 meeting. Indeed, they were not permitted to do so then; a vote to close a meeting must be taken at the meeting to be closed. *See* Compliance Board Opinion 94-5, at 11 (July 29, 1994).